



**Town of Arlington, Massachusetts**  
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## **BOARD OF SELECTMEN AND FINANCE COMMITTEE REPORT 2/25/2004**

### **REPORT OF BOARD OF SELECTMEN AND FINANCE COMMITTEE**

**SPECIAL TOWN MEETING  
FEBRUARY 25, 2004**

### **INTRODUCTION**

The Board of Selectmen and the Finance Committee are pleased to provide this joint report to the February 25, 2004 Special Town Meeting. Please consider that the main motion under Article 2 is that of the Board of Selectmen. The main motions under Articles 3, 4, and 5 are of the Finance Committee. The main motion under Article 6 is a joint motion of the Finance Committee and the Board of Selectmen. Obviously, the reason for calling the Town Meeting into session was to deal with a proposed amendment to the 2001 Special Town Meeting vote adopting a basic agreement between the Town and the Industrial Parties as to how the Peirce Field clean-up and subsequent construction of new athletic fields would proceed. The Town's negotiating team led by Superintendent of Schools Kay Donovan has negotiated, what the Finance Committee and Board of Selectmen believe to be, an amendment which carries with it very substantial benefits for the Town. These benefits were hard won concessions from the Industrial Parties in very tough but mutually respectful bargaining sessions over the last two years. The Board and Committee congratulate the Industrial Parties for their sense of fairness and responsibility exhibited in these discussions.

The Town Meeting will commence at 8:00 p.m. on February 25th and the Board and the Committee hope that all Articles can be dealt with at that meeting. However, if the discussion of all Articles has not been concluded on Wednesday, February 25th, then the Board will ask the Town Meeting to adjourn to Thursday, February 26th. It is important that the amendment be dealt with as soon as possible so that the remediation and reconstruction of the fields can proceed promptly after the close of the school year in June 2004. In addition, proceeding to the following week would place an additional burden on the Town Clerk's Office, who must deal with an election during that week.

The Board of Selectmen and the Finance Committee commends the following votes for your favorable consideration.

#### **ARTICLE 2**

#### **PEIRCE FIELD**

To see if the Town will vote to approve an amendment to the agreement dated May 2, 2001 between the Town of Arlington and Honeywell International Inc., Mass. Electric Company, and Keyspan Energy Delivery Company New England as it relates to Peirce Field and the DPW Yard so as to take account of certain issues that have arisen since the approval of the basic agreement amongst the parties as approved by the May 2001 Special Town Meeting, or take any action related thereto.

(Inserted at the request of the School Committee and Superintendent of Schools)

**VOTED:** That the Town hereby approves an amendment in substantially the form as provided in Appendix A, to the prior agreement dated February 2, 2001 between the Town of Arlington and Honeywell International, Inc., Massachusetts Electric Company and Keyspan Energy Delivery Company, Inc., as it relates to Peirce Field and the DPW Yard on Grove Street.

**COMMENT:** The Board of Selectmen strongly supports an affirmative vote under Article 2 of the Warrant. The Town began negotiations with the above-referenced companies, hereinafter the Industrial Parties or IPs, in 1996 when certain kinds of

contaminants were found at the DPW Yard and under the surface of Peirce Field. Massachusetts law, namely, Chapter 21E of the General Laws and the Massachusetts Contingency Plan promulgated thereunder, required certain steps to be taken to address these contaminants. Chapter 21E places responsibility for the clean up upon several categories of actors. The categories include, *inter alia*, any person or entity that placed the contaminants on a site, any person or entity that previously or presently owned the site regardless of fault and any person or entity that moved any of the contaminants on the site. These individuals are called "Potentially Responsible Parties" or "PRPs." The Town along with the IPs has all been recognized as PRPs as explained below.

What is now known as Peirce Field and the Town Yard had been used for various uses before the Town acquired ownership. These activities included a chromium processing facility and a manufactured gas plant. The operators of these plants placed certain byproducts of the manufacturing process on Peirce Field and the DPW Yard long before people knew that these byproducts were unhealthy for the environment. Peirce Field was also the site of Cutter's Pond, which was slowly filled in presumably by the Town to expand the playing fields behind the High School. Because the IPs can trace their corporate existence back to the original operators of these plants, they qualify as PRPs. Since the Town currently owns the site and likely was responsible for moving certain of the contaminants in order to fill Cutter's Pond, it is a PRP. In 1991 it was determined that an underground storage tank at the D.P.W. Yard was leaking. During the process of further examining the site it was found that manufactured gas byproducts were present at some depth beneath ground level. Further contaminants including chromium were discovered by Stop and Shop engineering personnel in 1995 in anticipation of possible expansion into the practice soccer field. In 1997 these sites were combined into one site and were recognized as such by the Department of Environmental Protection ("DEP").

The Town in conjunction with the Industrial Parties took immediate action consistent with the Massachusetts Contingency Plan ("MCP") to determine whether there was any immediate risk to public and health safety for users of the Field. It was determined that no such risk existed since the contaminants were at sufficient depth to preclude human contact and exposure.

Management of the site was governed by the responsibilities imposed on the PRPs as provided in the MCP. State law requires a DEP Licensed Site Professional ("LSP") to oversee compliance with the MCP. His responsibility along with the PRP's is to ensure the safety of the public and the environment as the remedy proceeds. All parties agree that Peirce Field has been and is currently safe for current recreational uses. When the Town entered negotiations it had one nonnegotiable commitment, that being the health and safety of the users of the field and the bordering neighborhoods. The Industrial Parties immediately agreed with this premise. In 2001 the Town reached a settlement with the Industrial Parties which included the following provisions:

First, the Industrial Parties agreed to perform the clean up and pay all clean-up costs up to \$7.2 Million. Any costs above \$7.2 Million would be subject to a Dispute Resolution proceeding. These proceedings would be calculated to assign appropriate percentage shares of additional costs amongst the various PRPs including possibly the Town of Arlington.

Second, the Industrial Parties agreed to restore the field in good condition and pay for remedy operation and maintenance in the future. The Industrial Parties also agreed to reimburse the Town for 67 percent of the cost of a recreational facility on the soccer field up to a \$2.67 Million amount. Please note that this provision required the Town to pay for the facility first and then, and only then, would the industrial parties reimburse the Town. In other words, if the Town did not build the facility, the Town would receive nothing of this amount.

In return for these concessions by the Industrial Parties, the Town accepted a procedure, which provided for making the site safe by installing a direct contact barrier and an engineered barrier over the field to restrict access to the contamination. Contamination at the DPW yard would be addressed through a "Class C Response Action Outcome, which essentially means a temporary solution would be implemented and that the property would be carefully monitored in the future, with the belief that no further action would be required.

Since portions of Peirce Field are in the 100-year flood plan, the Town agreed to undertake whatever actions were necessary to permit the remedy to go forward notwithstanding this designation. It was at first hoped that the Town could convince the Federal Emergency Management Agency ("FEMA") that this designation was inapplicable given the historic lack of impact of major storms on the site. Unfortunately, engineers hired by the Town were unable to sufficiently document this fact. In the May 2003 Special Town Meeting, the negotiating team led by its leader, Kay Donovan, the Superintendent of Schools, was able to persuade the Town Meeting to empower the Conservation Commission to waive the flood plain replication requirement in the Town's Wetland Protection Bylaw provided that no above-ground structures were to be constructed on the site. A joint application to the Conservation Commission and the Zoning Board of Appeals, who also has some jurisdiction over the site, has been prepared and a hearing will be held on February 26, 2004. The Town also agreed to Activities and Use Limitations ("AULs") on the field and on the Town Yard, which essentially means that there will be no change in the current uses on the site. This concession took into account that there were really no other places in Town to locate either the Town Yard or playing fields that make up Peirce Field. As might be expected after the expiration of three years since the 2001 Town Meeting, which overwhelmingly approved the 2001 Settlement Agreement, additional issues relating to the project have arisen as a result of further investigation and engineering activities. These issues must be addressed.

Based on these further investigations and activities, it is now clear that the cleanup costs for the Site will substantially exceed the \$7.2 Million commitment of the Industrial Parties. The current estimate is approximately \$10.4 Million. Further, investigation of the Town-owned culvert underneath the field makes clear that it needs to be replaced either now, or in the not too distant future.

Finally, it has also become clear that the fiscal constraints on the Town, including the school projects and the state of disrepair of the Town's Fire Stations, make it extremely unlikely in the immediate future that the Town could bear the cost of either a field house or hockey rink at a projected cost of \$7 to 10 Million dollars even, with the Industrial Parties' reimbursement contribution and a fund-raising campaign.

These new issues must be addressed now, which will require an amendment to the original Settlement Agreement. The Town negotiating team has agreed with the Industrial Parties to amend the Agreement in certain ways subject, of course, to the Selectmen and the School Committee's approval as well as that of Town Meeting. The recommended amendment would include the following items: First, the PRPs would agree not to invoke the Dispute Resolution procedure for costs in excess of the \$7.2 million cap at this time. Instead, use of this procedure will be delayed until the completion of the project. The Industrial Parties have agreed to initially fund any excess costs for the cleanup project subject to the Dispute Resolution procedure when construction is completed. This is a major concession on their part. If they chose not to do so and proceeded to the Dispute Resolution procedure, the project could essentially stop or substantially slowed. Your negotiating team thinks it makes little sense to invoke the Dispute Resolution procedure now for several reasons. To date, the level of cooperation between all the parties has been extraordinarily high. In addition, any Dispute Resolution solution would of necessity result in an adversarial atmosphere, since the process could culminate in litigation between all of the PRPs. As a result, the cleanup of the site could be delayed or postponed, an outcome that is not consistent with the requirements of the MCP or the availability of the Town's fields. Even if Dispute Resolution was invoked now, it is highly likely that another Dispute Resolution process would be required when the project was completed to address the final allocation of the actual (as opposed to estimated) costs of the project. It is unlikely that the potential level of responsibility of the Town for any overruns would change regardless of when the Dispute Resolution procedure occurred. The Town's position was, is now, and in the future will be that it should bear none of the cost. Finally, the Town is hopeful of persuading the Industrial Parties to assume the entire cost of the project, a possibility which would be foreclosed if resort were made now to Dispute Resolution. The Capital Planning Committee is exploring ways to plan for any contingency that becomes the responsibility of the Town in the future.

Based on all these facts, all of the PRPs agree that it makes no sense to implement the Dispute Resolution process now. Instead, what is of paramount importance is that all parties focus on timely completing the cleanup project in an efficient manner that is fully protective of public safety, human health, and the environment.

In another concession the Industrial Parties have agreed to bear the entire construction cost for replacement of the Town culvert (which currently is estimated to exceed \$1 Million) outside of the \$7.2 Million cap, subject only to a reimbursement by the Town of \$250,000. The culvert belongs to the Town, and although the cleanup might be able to proceed without replacement, all parties agree it would be extremely likely that the culvert will fail in the future and would then be the sole responsibility of the Town. If done in the future, the Town could also be required to displace and repair the engineered barrier at additional cost.

Finally, the Industrial Parties have agreed to provide money to the Town on a first dollar basis up to \$1.667 Million for necessary field improvements, in lieu of their prior commitment to reimburse the Town for two-thirds of the cost of the field house or hockey rink, up to a \$2.667 Million cap. This funding commitment would permit the Town to construct several major recreational improvements as part of the project, as well as allow the Town to remove several items from the 2005 Fiscal Year Capital Plan at a potential savings of \$1.667 Million. This amount of money given up front to the Town would reduce the \$2.667 Million previously set aside for the field house/hockey rink. The Town would still retain the difference between the estimated \$1.667 Million and the \$2.667 Million as seed money for a future facility. If, within 7 years of completing the site cleanup, the Town expends a minimum of \$4 Million to construct a facility on the soccer field, the Industrial Parties would reimburse the Town up to the difference between the estimated \$1.667 Million and the \$2.667 Million.

The parties have agreed that field turf for the football field, irrigation for the other fields and new homeside bleachers will be included in the improvements. Provided that the \$1.667 Million cap is not exceeded the Town will also receive a press box, concession stand, additional parking, field lighting, an artificial turf sweeper and a storage shed. If the projected costs of these items exceed \$1.67 Million, then the Town will be required to prioritize them so as not to exceed this cap. The Town would be responsible for any excess of \$1.67 Million of any final construction costs. The appropriate Town officials are cognizant of the fiscal constraints on the Town and will be wary of exceeding the \$1.67 Million cap.

The upcoming construction activities include, in the following order, these actions:

1. Preparation of surface and subsurface;
2. Installation of a new culvert;
3. Installation of protective engineered/direct contact barriers;
4. Installation of clean utility corridors;
5. Surface restoration;
6. Restoration of playing fields.

As discussed above, public safety considerations will be a foremost concern as the

Project proceeds. These procedures will include the following:

1. Implement dust and odor control;
2. Full-time air-monitoring stations at various locations;
3. Perimeter fencing to limit access to only appropriate workers;
4. 24-hour site security.

The anticipated construction schedule will see work begin first at the Department of Public Works early this spring. In June of this year work will begin on the remedy on the fields. Clean-up work is projected to be complete in the late fall of 2004 or early winter of 2005. Field restoration is scheduled to be complete in the spring of 2005. the football field will be usable for the fall of 2005. All other fields will be ready for the fall 2005 or the spring 2006 seasons.

The Town and Industrial Parties have completed a series of meetings with students and their parents at the High School, school staff, abutters and the general public. A website will be created perhaps with a link to the Town website to provide online information. There will be an 800 number and an e-mail address to the website so that the public can have their questions answered.

The highlights of this amendment to the Settlement Agreement will have the following important benefits to the Town. The Industrial Parties' continuation of funding will proceed uninterrupted by a Dispute Resolution process. The Industrial Parties will share or assume the entire cost of the Town's culvert now rather than leaving open the likelihood that the Town would have to bear this cost in its entirety in the future. The culvert restoration will not be counted against the remediation costs. Lastly, the Town can realize immediate benefits of recreational improvements as part of the clean up in lieu of the uncertain realization of the contingent \$2.667 Million in the present agreement. The Board unanimously recommends the amendment substantially in the form presented as Appendix A. Certain insubstantial changes to the agreement may be necessary before final signature of the PRPs.

The various attachments provided for in the amendment have not been included due to space considerations or were not complete at the time of writing this report. The original agreement approved in 2001 is also not provided, but copies of same can be obtained from the Town Counsel at (781) 316-3151.

The Board urges your support.

## **APPENDIX A**

### **FIRST AMENDMENT TO SETTLEMENT AGREEMENT**

**THIS FIRST AMENDMENT TO SETTLEMENT AGREEMENT** (this "Amendment") is made and entered into February \_\_, 2004, by and among Honeywell International Inc. ("Honeywell"), Boston Gas Company d/b/a KeySpan Energy Delivery New England ("KeySpan"), Massachusetts Electric Company ("MEC"), and the Town of Arlington (the "Town") (each a "Party" and collectively, the "Parties").

### **WITNESSETH**

A. The Parties entered into a Settlement Agreement, dated May 2, 2001 (the "Agreement"), to settle and compromise disputes among them, without the expense and time of litigation and without any admission of liability or any matter of fact or law, which are related to the alleged presence of, associated liability for, and response actions to be undertaken with respect to certain environmental contamination located in Arlington, Massachusetts.

B. In order to accommodate new information and each Party's needs, the Parties wish to amend certain of the terms of the Agreement in the manner hereinafter set forth. Terms initially capitalized in this Amendment and not otherwise defined shall have the meanings accorded to such terms in the Agreement.

C. This Amendment, although executed by all of the Parties, shall not become effective until and unless the entire Amendment memorialized herein is ratified in full and without qualification by the Town Meeting Members of the Town of Arlington at any duly noticed Town Meeting, which meeting shall adjourn not later than March 12, 2004. The ratification shall become effective upon the adjournment date of the Town Meeting or the date that the Town Meeting refuses to reconsider the previously voted affirmative vote, whichever is sooner (such date to be the "Effective Date" of this Amendment). The Town, at its sole cost, will use its best efforts to obtain such Town Meeting ratification. If requested by the Town, the Industrial Parties (at their own expense) will provide reasonable assistance to the Town in support of those efforts.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

### **1. Section 3.1 of the Agreement is amended to insert the following new sentence and subsections at the end of the section:**

Notwithstanding the foregoing provisions of this section, the Parties agree as follows:

#### **3.1.1. Mill Brook Culvert Replacement**

a. In light of the culvert's current condition and with respect to the Remedy to be implemented at Site, the Parties agree that repairs are necessary to the concrete portion of the Mill Brook culvert that transverses beneath the Site. Due to the anticipated nature and extent of the required repairs and the components of the Remedy, the Parties agree that the concrete portion of the culvert should be replaced. Draft design drawings and specifications for the proposed replacement culvert and the activities that are necessary to replace the culvert are attached hereto as Attachment 1 (hereinafter referred to as the "Culvert Work").

b. The Parties agree that costs associated with the Culvert Work shall be paid in the following manner.

(i) The Industrial Parties shall perform the Culvert Work, and initially pay all costs associated with the Culvert Work.

(ii) The Town shall, on or after July 1, 2004 and within sixty (60) days of a receipt of an invoice from the Industrial Parties, reimburse the Industrial Parties for the first \$250,000.00 in costs incurred by the Industrial Parties in conjunction with the Culvert Work.

(iii) The Industrial Parties shall pay for all costs associated with performing the Culvert Work in excess of \$250,000.00. The Parties agree that any such costs paid by the Industrial Parties shall not count toward the \$7.2 million cap on Response Costs set out in this Section 3.1.

No later than six (6) months after the completion of the Culvert Work, the Town, at its sole cost and expense, shall remove all accumulated materials from the corrugated steel portions of the Mill Brook culvert, including but not limited to sand, sediment, and debris, (the "Culvert Materials"). Prior to such removal, the Industrial Parties, at their own cost, shall sample the accumulated materials to determine whether the Culvert Materials, considering their nature and quantity, can reasonably be incorporated under the Remedy being constructed at the Site. The decision whether any or all of the Culvert Materials can be incorporated under the Remedy shall be in the sole discretion of the Industrial Parties, which discretion shall be reasonably exercised. In the event the Industrial Parties decide that some or all of the Culvert Materials can reasonably be incorporated under the Remedy, the Industrial Parties shall inform the Town of the appropriate procedures and timetable, and the Town will comply with such procedures.

In the event the Industrial Parties decide that some or all of the Culvert Materials cannot reasonably be incorporated under the Remedy, or the Town cannot comply with the Industrial Parties' procedures and timetable for incorporating the Culvert Materials under the Remedy, the Town shall arrange for the disposal of such Culvert Materials at an appropriate off-Site location. Prior to such disposal, the Industrial Parties shall compare the sample results for the Culvert Materials described in the previous grammatical paragraph to the sample results for sediment in a portion of Mill Brook upstream from the Site that were obtained on or about April 1998 (the "Upstream Materials"). In the event the sampling of the Culvert Materials demonstrates the presence of chromium and PAHs in types or concentrations higher than that detected in the Upstream Materials, the Industrial Parties shall reimburse the Town for the incremental cost of removing and properly disposing of such affected accumulated materials above the cost that would have been incurred if the chemical profile of the Culvert Materials had been substantially the same as that of the Upstream Materials. Such reimbursement shall be done within thirty (30) days after the Industrial Parties are presented with appropriate cost documentation. The amount reimbursed shall not count toward the \$7.2 million cap on Response Costs set out in this Section 3.1.

e. The Parties agree that each of the obligations set forth in this Section 3.1.1 shall be contingent upon the receipt of all required governmental permits and approvals in a form reasonably acceptable to the Town and the Industrial Parties.

f. The Parties agree that neither the Town's nor the Industrial Parties respective share of the costs associated with performing the Culvert Work, or sampling and removing accumulated material, which is the subject of this Section 3.1.1, shall be subject to reallocation in the event that Dispute Resolution is invoked by any Party with respect to the Excess Allocation.

### 3.1.2. Football Field Bleachers

a. The Parties agree that the bleachers on the south (home) side of the football field at the Site need to be replaced in conjunction with the performance of Response Actions at the Site. The Town has informed the Industrial Parties that the Town desires to have installed new bleachers in conformance with the manufacturer's specifications, and in the manner and location, shown on Attachment 2 hereto.

b. Subject to the provisions of Section 3.10.2 herein, the Industrial Parties, in cooperation and coordination with the Town and the vendor of the new bleachers, shall, as part of the implementation of Response Actions on the Site, design, purchase and install the new bleachers, including the design and installation of an appropriate foundation, in conformance with Attachment 2

hereto.

c. The Industrial Parties shall remove and properly dispose of the home field side bleachers, which costs shall not count toward the \$1,667,000.00 cap described in Section 4 hereof, but shall count as Response Costs under the Agreement.

d. The Town shall remove and store the scoreboard located near the football field at a location that does not interfere with the implementation of the Response Actions on the Site. The Town shall re-install the scoreboard upon completion of the Response Actions.

### 3.1.3 Football Field Improvements

a. The Town has informed the Industrial Parties that the Town has elected to install artificial turf on the football field at the Site when the Response Actions are complete in that area, in the size, manner and location shown on Attachment 3 hereto.

b. The Industrial Parties, in coordination and cooperation with the Town and the vendor(s) of the artificial turf shall ensure that the Response Actions implemented in the area of the football field are adequately designed and constructed to allow for the installation of the artificial turf.

c. Subject to the provisions of Section 3.10.2 herein, the Industrial Parties, in cooperation and coordination with the Town and the vendor(s) of the artificial turf shall, as part of the implementation of Response Actions on the Site, design, purchase and install the artificial turf in conformance with Attachment 3 hereto.

The Town and Industrial Parties agree that the incremental cost of installing a natural turf field that is avoided by the installation of the artificial turf is \$210,000.00.

### 3.1.4 Underground Sprinklers

a. The Town has informed the Industrial Parties that the Town has elected to install underground sprinklers on the baseball, practice soccer, and softball fields, in the size, manner and location shown on Attachment 4 hereto.

b. The Industrial Parties, in coordination and cooperation with the Town, shall ensure that the Response Actions implemented in the area of the baseball and softball fields are adequately designed and constructed to allow for the installation of such underground sprinklers.

c. Subject to the provisions of Section 3.10.2 herein, the Industrial Parties, in cooperation and coordination with the Town, shall, as part of the implementation of Response Actions on the Site, design, purchase and install underground sprinklers on the baseball, practice soccer and softball fields in conformance with Attachment 4 hereto.

### 3.1.5 Concession Stand

a. The Town has informed the Industrial Parties that the Town desires to construct a combination concession stand/restroom facility, together with utilities to provide water, sewer and electric service, on the football field, in the size, manner and location shown on Attachment 5 hereto.

b. The Industrial Parties, in coordination and cooperation with the Town, shall ensure that the Response Actions implemented in the area of the football field are adequately designed and constructed to allow for the installation of such combination concession stand/restroom facility.

c. Subject to the provisions of Section 3.10.2 herein, the Industrial Parties, in cooperation and coordination with the Town, shall as part of the implementation of Response Actions on the Site design, construct and install the combination concession stand/restroom facility and related fixtures and utilities in conformance with Attachment 5 hereto.

### 3.1.6 Press Box

a. The Town has informed the Industrial Parties that the Town desires to construct a handicap-accessible press box, together with electric utility service, above the home side football field bleachers, in the size, manner and location shown on Attachment 6 hereto.

b. The Industrial Parties, in coordination and cooperation with the Town, shall ensure that the Response Actions implemented in the area of the football field are adequately designed and constructed to allow for the installation of such a press box.

c. Subject to the provisions of Section 3.10.2 herein, the Industrial Parties, in cooperation and coordination with the Town, shall, as part of the implementation of Response Actions on the Site, design, construct and install the press box and related utilities in conformance with Attachment 6 hereto.

### 3.1.7 Storage Shed

a. The Town has informed the Industrial Parties that the Town desires to construct a storage shed, together with electric utility service, on the football field, in the size, manner and location shown on Attachment 7 hereto.

b. The Industrial Parties, in coordination and cooperation with the Town, shall ensure that the Response Actions implemented in the area of the football field are adequately designed and constructed to allow for the installation of such a storage shed.

c. Subject to the provisions of Section 3.10.2 herein, the Industrial Parties, in cooperation and coordination with the Town, shall, as part of the implementation of Response Actions on the Site, design, construct and install the storage shed and related utilities in conformance with Attachment 7 hereto.

### 3.1.8 Mill Brook Drive Parking

a. The Town has informed the Industrial Parties that the Town desires to reconfigure the parking area located off of Mill Brook Drive, in the size, manner and location shown on Attachment 8 hereto.

b. The Industrial Parties, in coordination and cooperation with the Town, shall ensure that the Response Actions implemented in the area of the Mill Brook Drive parking area are adequately designed and constructed to allow for the reconfiguration of the parking area.

c. Subject to the provisions of Section 3.10.2 herein, the Industrial Parties, in cooperation and coordination with the Town, shall, as part of the implementation of Response Actions on the Site, design and reconfigure the Mill Brook parking area in conformance with Attachment 8 hereto.

### 3.1.9 Lighting

a. The Town has informed the Industrial Parties that the Town desires to install lighting near the baseball field, in the size, manner and location shown on Attachment 9 hereto.

b. The Industrial Parties, in coordination and cooperation with the Town, shall ensure that the Response Actions implemented in the area of the baseball field are adequately designed and constructed to allow for the installation of such lighting.

c. Subject to the provisions of Section 3.10.2 herein, the Industrial Parties, in cooperation and coordination with the Town, shall, as part of the implementation of Response Actions on the Site, design and install the lighting in conformance with Attachment 9 hereto.

### 3.1.10 Artificial Turf Sweeper

- a. The Town has informed the Industrial Parties that the Town desires to purchase a cleaning machine for the artificial turf on the football field, in conformance with the manufacturer's specifications shown on Attachment 10 hereto.
- b. Subject to the provisions of Section 3.10.2 herein, the Industrial Parties, in cooperation and coordination with the Town, shall, as part of the implementation of Response Actions on the Site, purchase and have delivered to the Site such a cleaning machine in conformance with Attachment 10 hereto.

### 3.1.11 ADPW Yard IRA

- a. The Town has at its sole cost and expense filed an Immediate Response Action Completion Report, a Phase II Comprehensive Site Assessment Report, and a Phase III Remedial Action Plan ("collectively, the "MCP Reports") for the Disposal Site identified by RTN 3-19754 (hereinafter the "ADPW LNAPL Site"), in compliance with the MCP, in connection with the detection and continued presence of separate phase hydrocarbon contamination in the ADPW yard proximate to the lift trench and as shown on the attached Figure A.
- b. The Town has, at its own cost and expense filed a Class C Response Action Outcome ("RAO") for the ADPW LNAPL Site.
- c. The Class C RAO requires that the following groundwater monitoring wells be monitored on a quarterly basis: RW-1 and AGMW-6. The Parties agree that this monitoring shall be conducted by the Town at its sole cost and expense, and that the results of this monitoring shall be provided to all of the Parties. The Parties further agree that upon the completion of four (4) consecutive quarterly monitoring events subsequent to the filing of the Class C RAO, each of which demonstrates that, after averaging, less than 0.5 inches of petroleum residue remain in RW-1, the conditions set forth in Section 1.32 of the Agreement for inclusion of RTN 3-19754 in the definition of the Site will have been met, subject to execution and delivery to the Industrial Parties of the certification called for in Section 1.32 of the Agreement.
- d. The Industrial Parties agree to reimburse the Town the amount of \$25,000.00 for the preparation of the MCP Reports and Class C RAO. The Industrial Parties agree to make such reimbursement within sixty (60) days of receipt of an invoice from the Town that documents the expenses incurred by the Town and the amount for which reimbursement is sought. The Parties agree that the reimbursement amount paid by the Industrial Parties shall not count towards the \$7.2 million cap on Response Costs set out in Section 3.1 of the Agreement.

3.1.12 Permitting. The obligations of the Industrial Parties set forth in Sections 3.1.2 through 3.1.10 above to purchase, construct and install fixtures and improvements that would be located above-ground is expressly contingent upon the Town timely obtaining all required governmental permits and approvals for such fixtures and improvements in a form reasonably acceptable to the Town and the Industrial Parties.

## 2. **Section 3.2 of the Agreement is amended to insert the following new sentence at the end of the section:**

For purposes of (c) above, such Status Reports shall include, at a minimum, those Line Items of the Selected Remedy, and related restoration activities; the percent of spending of the budgeted amounts corresponding to said Line Items; any potential costs overruns and/or Change Orders that may be expected or contemplated in association with each Line Item; any proposed revisions to any elements of the Remedy and any related restoration activities; and any revisions to any project timelines that may have arisen, as well as the estimated percent completion of major project tasks.

## 3. **The text of Section 3.3 of the Agreement is deleted in its entirety and replaced with the following:**

Upon the completion of the construction activities associated with the implementation of the Remedy and related restoration activities, the Industrial Parties shall prepare a final Status Report (the "Final Status Report"). Upon receipt of the Final Status Report, the Town shall have thirty (30) days (the "Final Status Report Review Period") to review the Final Status Report and seek clarification from the Industrial Parties, if desired. Before expiration of the Final Status Review Period, the Town shall notify the Industrial Parties if it will challenge the Final Status Report pursuant to Article 9 of the Agreement. If none of the Parties notifies the others of a challenge to the Final Status Report pursuant to Article 9 of the Agreement before expiration of the Final Status Report Review Period, or if there is such a challenge, upon resolution of that challenge pursuant to the Article 9 process, the Final Status Report (as modified pursuant to the resolution of the challenge, if any) shall be deemed



agreed upon by the Parties. At that time, if the Final Status Report concludes that the Response Costs exceed \$7.2 million, and the allocation of such excess (the "Excess Allocation") has not been mutually agreed to by the Parties, then any Party may invoke Article 9 dispute resolution to resolve the allocation of such excess. In any proceeding to determine the Excess Allocation, no presumption shall exist as to any allocable share of any of them.

**4. The text of Section 3.10.2 of the Agreement is deleted in its entirety, and replaced with the following:**

(a) Notwithstanding any other provision of this Agreement, the Industrial Parties and the Town agree that as part of, and concurrently with, the implementation of Response Actions and the Remedy at the Site, the Industrial Parties shall, subject to the provisions of this Section 3.10.2 and Section 3.1.12 above, pay for all costs associated with the design, purchase, installation and construction of the following recreational improvements to be located on the Site:

- (i) artificial turf, pursuant to Section 3.1.3 hereof;
- (ii) new football field bleachers, pursuant to Section 3.1.2 hereof;
- (iii) an underground sprinkler system for the baseball, practice soccer and softball fields at the Site, pursuant to Section 3.1.4 hereof;

a concession stand on the football field, pursuant to Section 3.1.5 hereof;

a press box, pursuant to Section 3.1.6 hereof;

a storage shed, pursuant to Section 3.1.7 hereof;

the reconfiguration of the Mill Brook parking area, pursuant to Section 3.1.8 hereof;

lighting for the baseball field, pursuant to Section 3.1.9 hereof; and

an artificial turf-cleaning machine, pursuant to Section 3.1.10 hereof.

- (b) [Intentionally omitted].

(c) The current estimated cost of designing, purchasing, constructing, and installing each of the items set forth above in subsections (a)(i) – (a)(ix) above, together with the cost of the Industrial Parties' design obligations, are shown for each item on Attachment 11 hereto. The Industrial Parties shall provide bid-ready specifications for each of these items to the primary Remediation Contractor selected by the Industrial Parties, and request that such contractor provide a separate detailed price quote for the purchase, delivery, construction and installation of each item.

(d) The Industrial Parties shall, promptly upon their receipt of same and at one time, provide a copy of the price quote received from the primary Remediation Contractor for each item to the Town, together with a summary of the actual design costs incurred and a good faith estimate of the design costs to be incurred by the Industrial Parties with respect to each item. The Town shall have ten (10) business days from its receipt of such information to notify the Industrial Parties whether the Town elects to have the Industrial Parties proceed with the purchase, construction and installation of each item for which a price quote has been provided, subject to the following limitations:

- (i) the Town must exercise its right of election with respect to each of the items set forth in subsections (a)(i) - (a)(iii) above; and

- (ii) if the total amount of the price quotes, and the Industrial Parties' actual design costs and good faith design cost estimate for each of the items elected by the Town, together with a contingency equal to 10% of such total amount, exceeds the amount of \$1,667,000.00, then the Town must decline to exercise its right of election with respect to one or more of the items set forth in subsections (a)(iv) – (a)(ix) herein so that the new total amount (as recalculated pursuant to this subsection) is less than or equal to \$1,667,000.00.

(e) The Industrial Parties shall track the actual purchase, installation and construction costs, as well as the Industrial Parties' related design costs, for each of the items for which the Town has exercise a valid right of election, (hereinafter referred to as the "Recreational Improvement Costs") and include a summary of such costs for each item in the Status Reports and in the Final Status Report. Upon the completion of the construction activities associated with the implementation of the Remedy and related restoration activities, the Industrial Parties shall, to the extent assignable, assign to the Town all third-party warranties received for such item.

(f) Before expiration of the Final Status Review Period, the Town shall notify the Industrial Parties if it will challenge the Recreational Improvement Costs pursuant to Article 9 of the Agreement. If none of the Parties notifies the others of a challenge of the Recreational Improvement Costs pursuant to Article 9 of the Agreement before expiration of the Final Status Report Review Period, or if there is such a specific challenge, upon resolution of that challenge pursuant to the Article 9 process, the Recreational Improvement Costs (as modified by the challenge, if any) shall be deemed agreed upon by the Parties and, after subtraction of the \$210,000.00 referred to in 3.1.3(d) hereof be deemed the Final Recreational Improvement Costs.

(g) If the Final Recreational Improvement Costs exceed \$1,667,000.00, the Town shall, within sixty (60) days after its receipt of an invoice from the Industrial Parties, reimburse the Industrial Parties for the amount that the Final Recreational Improvement Costs exceed \$1,667,000.00.

(h) If the Final Recreational Improvement Costs are less than \$1,667,000.00, the Industrial Parties shall, within sixty (60) days of receipt of complete invoices from the Town, reimburse the Town for its actual billed and paid costs incurred during the time period between the commencement of construction and completion of restoration activities on Peirce Field for transporting students, staff and equipment to alternative locations, including but not limited to transporting student athletes to alternative playing fields, as a result of the restoration activities on Peirce Field; provided, however, that in no event shall the amount of reimbursement, when added to the Final Recreational Improvement Costs, exceed the amount of \$1,667,000.00.

(i) Immediately upon the determination of the Final Recreational Improvement Costs and the payment of any reimbursement pursuant to subsection (h) above, the Industrial Parties shall subtract from the amount of \$2,667,000 the amount of (a) the Final Recreational Improvement Costs plus the amount of any such reimbursement, or (b) \$1,667,000.00, whichever is less, with the amount of the remainder to be known as the "Residual Soccer Field Recreation Improvement Fund." The Industrial Parties will reimburse the Town the full amount of the Residual Soccer Field Recreation Improvement Fund, and in no event more than the full amount of the Residual Soccer Field Recreation Improvement Fund, if all the following conditions are met:

(i) within seven (7) years after the determination of the Final Recreational Improvement Costs, the Town submits appropriate documentation to the Industrial Parties demonstrating that the Town has incurred actual costs greater than \$4.0 million to construct recreational improvements on the Soccer Field; and

(ii) prior to any such construction, the Parties consulted with each other and agreed that the type and location of the recreational improvements to be constructed on the Soccer Field are consistent with the Response Actions and the provisions of the Agreement, as amended.

(j) The Industrial Parties and the Town agree that, to the extent its construction is otherwise consistent with the Response Actions and this Agreement, as amended, a field house or hockey rink constructed on the Soccer Field is acceptable as recreational improvements under Section 3.10.2(i) above.

(k) Any disputes regarding arising under this Section 3.10.2 shall be resolved pursuant to the terms of Article 9 of the Agreement.

**5. Article 7 of the Agreement is amended to include the following new section:**

7.8. The Town and the Industrial Parties acknowledge that a portion of the Site is located within the FEMA-designated floodplain to Mill Brook. The Town, with the support of the Industrial Parties, has received Town Meeting approval to amend the Town's Wetland Bylaw in manner that would allow the Town Conservation Commission to issue a variance authorizing the performance of the Anticipated Response Actions and implementation of the Remedy. That amendment has been approved by the Massachusetts Office of the Attorney General.

7.8.1 The Town, contingent upon the limitations set forth below, hereby releases, waives and forever relinquishes the Industrial Parties from any and all claims, damages or costs of any kind (including attorney fees) to real or personal property owned, leased or otherwise controlled by the Town within the area marked on Figure B hereto, and arising from or related to flood damage associated in any way with proposed variance referenced in this Section 7.8.

7.8.2 The release provided herein is contingent upon

the approval of the Attorney General of the amendment to the Town's Wetland Bylaw;

the issuance by the Town Conservation Commission of the variance required for the performance of the Anticipated Response Actions;

The issuance by the Town Zoning Board of Appeals of the zoning relief required for the performance of the Anticipated Response

Actions; and

the implementation by the Industrial Parties of the Remedy on the portion of the Site which falls within the designated Mill Brook floodplain.

7.8.3 Notwithstanding the above, the Parties agree that the foregoing release shall not apply to any flooding that damages any below-grade portion of Remedy at the Site, with the exception of damages to the following:

(a) any portion of the Mill Brook culvert within the Site as shown on Figure B hereto;

(b) any sprinkler systems; and

(c) any foundations or other Town-owned or controlled supporting structures for above-ground improvements within the Site, as shown on Figure B hereto.

**6. The Party Contacts designated in Section 10.1 of the Agreement are deleted in their entirety and replace with the following:**

Honeywell: James Wong, Jr.  
Corporate Director, Global Due Diligence  
Honeywell International Inc.  
P.O. Box 1139  
101 Columbia Road  
Morristown, NJ 07962-1139  
Fax (973) 455-3082

With a copy to: Thomas Byrne, Esq.  
Assistant General Counsel  
Honeywell International Inc.  
101 Columbia Road  
Morristown, NJ 07962  
Fax (973) 455-5904

KeySpan: Alexander G. Taft  
Director of Environmental Operations  
KeySpan Energy Delivery New England  
52 Second Avenue  
Waltham, MA 02451  
Fax (781) 890-4587

With a copy to: Wendy B. Levine, Esq.  
Senior Environmental Counsel  
KeySpan Energy Delivery New England  
52 Second Avenue  
Waltham, MA 02451  
Fax (781) 290-4965

MEC: Michele Leone  
Senior Environmental Engineer  
National Grid USA Service Company  
25 research Drive  
Westborough, MA 01582  
Fax (508) 389-4299

With a copy to: Mark C. Kalpin, Esq.  
Hale and Dorr LLP

60 State Street  
Boston, MA 02109  
Fax 617-526-5000

The Town: Kathleen F. Donovan  
Superintendent  
Arlington Public Schools  
869 Massachusetts Avenue  
Arlington, MA 02476  
Fax 781-316-3509

With a copy to:

and to: John F. Maher, Esq.  
50 Pleasant Street  
Arlington, MA 02476  
Fax 781-316-3159

Nancy Kaplan, Esq.  
Keegan, Werlin & Pabian, LLP  
265 Franklin Street  
Boston, MA 02110  
Fax 617-951-1354

**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed as a sealed instrument by their duly authorized representatives as of the dates set forth below their respective signatures.

Honeywell International Inc. Boston Gas Company d/b/a KeySpan Energy Delivery New England

By: By:

Its: Its:

Date: Date:

Massachusetts Electric Company Town of Arlington

By: By:

Its: Its: Town Manager

Date: Date:

Approved as to Form:

By:

Its: Town Counsel

Date:

### **ARTICLE 3 MUNICIPAL BUILDING INSURANCE TRUST FUND**

To see if the Town will vote to appropriate a sum of money from that fund established under Section 13 of Chapter 40 of the General Laws, such appropriation to be used to defray the costs of repair to the Robbins Memorial Library as a result of recent flooding at this facility, or take any action related thereto.

(Inserted at the request of the Acting Town Manager)

**VOTED:** That the Town hereby appropriates and transfers \$100,000.00 from the Building Insurance Trust Fund, or any lesser amount necessary to defray the costs of repair to the Robbins Memorial Library as a result of recent flooding at the facility.

**COMMENT:** On January 10, 2004 the Robbins Library experienced substantial damage to the Fiction Room and Community Room from a burst frozen sprinkler system. The clean up costs and replacement of materials, rugs and storage of books during the cleanup are estimated to cost approximately \$65,000. The Town's current property insurance carries a \$100,000 deductible. Any damage at the library, which falls within this deductible, can be paid for from the Municipal Building Insurance Trust Fund. The

Municipal Building Insurance Trust Fund has over \$2 Million in assets in it. The Town has slowly built up this reserve over the years so as to address costs to pay for damage to Town buildings not covered by insurance. The additional \$35,000 would take care of any amount of the final cost in excess of the \$65,000 estimate.

## ARTICLE 4

**APPROPRIATION/CAPITAL BUDGET**

To see if the Town will vote to appropriate a sum of money to defray the expense of purchasing, leasing, or bonding of capital equipment, infrastructure, buildings or other projects of the Town or to acquire real property for municipal purposes; to appropriate a sum of money to fund previously incurred or future Town debt, to acquire land for said projects where necessary by purchase, eminent domain taking or otherwise, determine how the money shall be raised including the possibility of borrowing any or all of the same, or the transfer of funds from any previous appropriation, determine how such money shall be expended, or take any action related thereto.

(Inserted by the Board of Selectmen, and at the request of the Acting Town Manager and the Capital Planning Committee)

**VOTED:** That the sum of \$250,000 be and hereby is appropriated for replacement of a portion of the Town culvert under Peirce Field and for costs incidental and related thereto.

And that the Treasurer, with the approval of the Board of Selectmen, is hereby

Authorized to borrow not exceeding the sum of \$250,000 under and pursuant to Section 7(1) (1A) of Chapter 44 of the General Laws, and any other enabling authority, and to issue bonds or notes of the Town therefore, said sum to be expended under the direction of the Town Manager and that the Town Manager is authorized and directed to apply for and accept any further federal, state or other grants that may be available for the foregoing project and equipment.

**COMMENT:** The \$250,000.00 amount is necessary to pay for the Town's share of the replacement of the Town culvert in conjunction with the Peirce Field renovation referenced under Article 2. This amount was planned for fiscal year 2005 capital budget bonding section under the Annual Town Meeting. This Article 4 in this Special Town Meeting advances the appropriation authorization so that the Peirce Field remediation agreement may go forward in its entirety. The article does not affect the aggregate planned fiscal year 2005 capital budget anticipated bonding or capital budget anticipated debt service.

## ARTICLE 5

## COLLECTIVE BARGAINING/RANKING POLICE OFFICERS

To see if the town will vote to approve the fiscal items contained in a collective bargaining agreement between the Town acting by and through the Acting Town Manager and that collective bargaining unit represented by the Arlington Ranking Officers Association, determine how the money shall be raised and expended or take any action related thereto.

(Inserted at the request of the Acting Town Manager)

**VOTED:** That the Town does hereby approve all fiscal items contained in a collective bargaining agreement between the Town acting through its Town Manager and Arlington Ranking Police Officers Association, as follows:

1. effective July 2, 2002 a 3% general increase;
2. and for that purpose the sum of \$24,764 be and hereby is transferred from Article 62 of the 2001 Annual Town Meeting; \$24,936 is transferred from Article 49 of the 2002 Annual Town Meeting and \$45,000 is transferred from Article 52 of the 2003 Annual Town Meeting, for a total of \$94,700, to be expended under the direction of the Town Manager;
3. and the Pay and Classification Plan is amended accordingly.

**COMMENT:** The Ranking Police Officers are the only collective bargaining unit that did not have a contract for fiscal year 2003. This vote would bring them level to the other Town unions, which were given a 3 percent increase for that year.

## ARTICLE 6

**INTERNET INFORMATION OFFICER**

To see if the Town will vote to eliminate the position of town webmaster in the Comptroller's Office, establish the position of Internet Information Officer in the Town Clerk's Office or the Department of Planning and Community Development, to amend the appropriate line items of the FY04 town budget, or take any action related thereto.

(Inserted at the request of 100 registered voters)

**VOTED:** That no action be taken under Article 6 of the Warrant.

**COMMENT:** The Finance Committee and the Board of Selectmen unanimously believe that this Article is premature and it is subject matter amongst other information technology issues are better dealt with in the Annual Town Meeting. Two Articles in that Warrant propose the establishment of the Information Technology Advisory Committee, which would be charged with the responsibility of advising various Town boards, officials, and Town Meeting as to how the Town can better handle its various information technology systems including the Town's Webpage. The Selectmen and Finance Committee believe that it will be more effective to look at several issues related to the Town's Information Technology Systems as a whole rather than dealing with them piece meal. It is believed that some of the proponents of this article support this approach.

In addition, the Town Counsel has raised some legal issues that might prevent an affirmative vote under this Article. The transferring of money for a Town position from one department to another does not automatically place that position under the authority of the head of new department. The authority to appoint individuals is derived from various provisions of the General Laws and the Town Manager Act. For instance, the Town Clerk has authority to appoint individuals to positions in her department only for those positions, which directly support the duties imposed upon her by the General Laws. Under the Town Manager Act the Town Manager has the responsibility to appoint all Town employees except those falling under the jurisdiction of elected officials and the Superintendent of Schools. Again, these and other matters can be better addressed at the Annual Town Meeting. For this and the other above-referenced points a no action vote is recommended.